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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CRAIG PETRIK et al., Plaintiff, v. MAHAFFEY & ASSOCIATES Defendant and Appellant, BERGER KAHN, Movant and Respondent.	G055779 (Super. Ct. No. 05CC10571) O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Gregory H. Lewis, Judge. Affirmed. Motion to Dismiss Denied.

Mahaffey Law Group and Douglas L. Mahaffey for Defendant and Appellant.

Hallstrom, Klein & Ward, Grant J. Hallstrom and Paul J. Kurtzhall for Movant and Respondent.

In 2009, a trial court ordered attorney Douglas L. Mahaffey, and his firm, Mahaffey & Associates, PLC (collectively referred to in the singular as Mahaffey), to pay $35,000 in sanctions to the opposing counsel's firm, Berger Kahn (BK). Mahaffey would have preferred if the court had ordered him to pay the sanctions to BK's clients, Craig and Jeanne Petrik (the Petriks). If this had been the case, Mahaffey could have offset the sanction award against the money judgment the Petriks owed him. (Code Civ. Proc., § 431.70.)[1] The Petriks were Mahaffey's former clients and he obtained a $284,000 judgment against them.

After concluding the sanction award was payable to BK, and not the Petriks, the trial court denied Mahaffey's 2017 motion to compel acknowledgement of satisfaction of the judgment. On appeal, Mahaffey asserts the trial court erred for the following three reasons: (1) the Petriks had the right to recover sanctions against Mahaffey; (2) the Petriks "implicitly assigned" this right to BK; and (3) sections 666 and 431.70 require that the trial court file an acknowledgement of satisfaction of judgment. We conclude these arguments lack merit and affirm the court's order.

FACTS

I. *The Underlying Litigation*

Mahaffey represented the Petriks in a large construction defect case. Mahaffey settled the case for $400,000. Over the Petriks' objection, the court determined the settlement was valid and refused to vacate the judgment. This court affirmed the trial court's ruling. (*Petrik v. FN Projects, Inc.* (Apr. 6, 2005, G033528) [nonpub. opn.] (*Petrik I*).)

[1] All further statutory references are to the Code of Civil Procedure.

II. *The Malpractice Action*

The Petriks, represented by BK, filed a legal malpractice and breach of contract lawsuit against Mahaffey. (*Petrik I, supra,* G033528) [nonpub. opn.].) Mahaffey filed a cross-complaint seeking over $120,000. (*Ibid.*)

A. *Orders for Fees and Sanctions*

The court referred the parties to a referee to assist with several discovery disputes. The referee concluded the Petriks prevailed in the disagreement and recommended that Mahaffey should pay most of the referee's fees.

In March 2008, the Petriks filed a request for the trial court to enter an order (1) sanctioning Mahaffey, and (2) affirming the discovery referee's recommendation to reallocate fees (with Mahaffey paying 80 percent) due to Mahaffey's "course of conduct." The Petriks explained both orders concerned the same issue, i.e., Mahaffey's "failure to comply with discovery obligations and [the Petriks] need to involve the [d]iscovery [r]eferre and this [c]ourt to obtain compliance." They noted Mahaffey, throughout this case, "displayed a brazen disregard for the discovery process."

The Petriks advised the court that the referee recommended reallocation of fees for the reasons detailed in his report, attached as exhibit No. 1. They noted exhibit No. 2 contained a copy of a proposed order for monetary sanctions, submitted after a three day hearing regarding the authenticity of "the unredacted [April 2, 2006] Petrik/Acreage Cost Allocation Spreadsheet."

The Petriks reminded the court that it previously ruled Mahaffey should pay "for the attorney[] fees and costs incurred . . . in responding to [Mahaffey's] belated production of the unredacted spreadsheet." They made the following argument: "The [c]ourt will no doubt recall that initially evidentiary sanctions were imposed on . . . Mahaffey due to the willful failure to comply with a [c]ourt [o]rder. However, this [c]ourt stayed the imposition of the evidentiary sanctions, based on the last minute production of the unredacted spreadsheet by . . . Mahaffey. After a [three] day hearing,

this [c]ourt determined the spreadsheet was authentic, but monetary sanctions should nevertheless be imposed for the costs and fees incurred by [the Petriks]. This [c]ourt should sign the proposed [o]rder, which has been pending for more than [six] months."[2]

The trial court signed an order, dated May 23, 2008, approving the discovery referee's findings and recommendation regarding the fee reallocation, which totaled $6,963. It ordered that Mahaffey must pay the Petriks $6,963 "forthwith."

In a separate order, signed the same day, the court sanctioned Mahaffey for failing to comply with its prior order requiring production of an unredacted spreadsheet. The Petriks prepared an order for the court's signature to say the $35,000 sanctions were awarded to themselves. The court crossed out this language and handwrote the sanctions were awarded to "attorneys, [BK] from" Mahaffey. It also crossed out the language saying the money was not payable until further rulings in the lawsuit. The court specified the sanctions were "payable forthwith."

B. *Judgment Debtor's Exam (JDE)*

Before the trial court entered a final judgment, BK sought to levy Mahaffey's accounts and scheduled a JDE. The court's minute order reflects that before the scheduled examination the parties reached a settlement agreement. Mahaffey explained a transcript of the hearing was not created, but the terms of the agreement were correctly described in a later declaration prepared by Stephan Cohn, one of BK's attorneys. Cohn stated BK agreed to halt collection activities because on May 14, 2009, Mahaffey promised to pay "the debt of approximately . . . $42,000, plus interest, in [six]

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[2] In his summary of the facts, Mahaffey noted exhibit No. 2 shows the Petriks' prepared a proposed order for sanctions that indicated the award should be made payable to the attorney/client trust account. The court's minute order on the matter specified the $35,000 in sanctions was "payable to the law firm of [BK] (and not the trust account) and against . . . Mahaffey . . . (not . . . Brown)." This decision was also reflected in the court's final order.

monthly payments, and the interest would be calculated up to May 13, 2009 (the day before the on the record agreement)."

Cohn stated the following: "At the time of the agreement, the daily interest rate on the debt of $41,963.00 was $11.50 per day ($41,963 x .10 = $4,196.30/365 = $11.50 per day). Interest was owed at the daily rate for 354 days (5/24/08 - 5/13/09). The total interest owed at the time was $4,071.00 ($11.50 x 354 = $4,071.00). Adding the interest ($4,071.00) to the principle ($41,963.00) totals $46,034.00. Dividing $46,034.00 by [six] monthly payments equals $7,672.33 per month. Mahaffey's first payment was due in June, 2009. Mahaffey's first payment of $21,500.00 was not received until August 2009. Once Mahaffey failed to make payment as promised, [BK] was no longer obligated to forebear collection."

Cohn explained Mahaffey's August 19, 2009, payment of $21,500.00 was applied to satisfy the referee fee order plus interest (which totaled $7,640.23) and the remaining amount ($13,859.77) was applied to the sanction award. He noted Mahaffey made three other payments ($7,000 in September 2009, $2,000 in October 2009, and $5,000 in November 2009). Mahaffey did not make any payments after November 2009.

C. *Final Judgment*

After a jury trial, the jurors submitted a special verdict. On October 20, 2009, the trial court filed a final judgment, incorporating the special verdict and the court's statement of decision/final judgment. The final judgment reflected the trial court's determination the Petriks owed Mahaffey $10,000 on the cross-complaint, and it also awarded Mahaffey the costs of suit ($274,594). On the Petriks' accounting claim, the court determined that from the underlying construction defect case's settlement proceeds only $146,323.18 should be remitted to the Petriks due to several offsets. The final judgment did not mention the $6,636 referee fee or $35,000 sanction award.

Mahaffey included in our record a copy of the Petriks' "proposed judgment," which the court did not use. The proposed judgment included language

crediting the sanctions award and the referee award against what the Petriks owed Mahaffey. As stated, the court's final judgment did not include any offsets for sanctions or referee costs.

D. *Mahaffey's Offer of Assignment*

Mahaffey filed an "[a]ssignment of complete cross-complaint judgment and cost award to the full extent of outstanding order against . . . Mahaffey . . . to BK . . . ." (Capitalization omitted.) The document stated Mahaffey assigned to BK his right to the final judgment against the Petriks "[i]n exchange for a full and complete satisfaction of judgment." He specified that $42,000, from the $284,594 judgment against the Petriks, would serve to completely satisfy what he owed, i.e., the sanction award. He attached an exhibit containing the letter he sent BK demanding the firm file a satisfaction of judgment pursuant to section 724.050. The letter stated the $35,000 sanction "was settled for $42,000." BK rejected the assignment and offer to reduce the Petriks' judgment.

In November 2009, Mahaffey wrote BK a letter stating his last payment of $5,000 represented "the final payment of the $35,000 sanction award." He demanded BK file a satisfaction of judgment, stating the following, "As demanded earlier, you have now been paid twice for this sanction award, one by the assignment of the judgment in my favor for the sum of $42,000 to the Petriks to offset in part [the] approximately $280,000 judgment they owe Mahaffey & Associates, PLC, and again by payment of cash [in] the sum of $35,500. [¶] You were previously demanded on June 30, 2009 to file a satisfaction of judgment pursuant to . . . [s]ection 724.50 and that demand is hereby repeated."

E. *Petriks' Chapter 7 Bankruptcy*

On May 22, 2012, the bankruptcy court discharged the Petriks' debts. The order included Mahaffey's judgment against the Petriks.

F. *Contempt Proceedings*

In May 2017, BK sought to hold Mahaffey in contempt for failing to pay the sanction award. BK asserted Mahaffey had made several payments totaling $22,859.77, but he still owed approximately $29,600 (including interest).

Mahaffey filed an opposition, asserting he paid the $35,000 sanction award in 2009. Alternatively, Mahaffey asserted the sanction award was "exonerated separately as a matter of law by the final judgment entered in favor of . . . Mahaffey against the Petriks for $280,000." He argued the following: "Because of the 'one judgment rule' and the fact [BK] stands in the shoes of the Petriks as assignees on this sanction award, the $35,000 sanction award merged into the judgment and thus Mahaffey now seeks a refund by a separate motion set for August 21, 2017. Thus this $35,000 was paid and then ultimately washed out into the reverse judgment, leaving it a liability back to Mahaffey from [BK]."

In its August 9, 2017, minute order, the court made the following factual findings regarding the sanctions award: (1) Mahaffey made four payments totaling $35,500 to BK; (2) when Mahaffey made his first payment in August 2009, which was late, he owed $39,343.90 due to the accumulation of interest; (3) when Mahaffey made his last payment in November 2009, he still owed $4,151.18 on his "interest-bearing obligation"; (4) from November 2009 to August 2017 the daily interest rate was $1.14, adding a total of $3,223.92 to the balance owed; (5) Mahaffey still owed a total of $7,375,10. The trial court noted the sanction order required payment "to the law firm, [BK], instead of its clients."

With respect to referee fees, the court determined the $6,963 reallocation was payable to the Petriks. It concluded Mahaffey had not paid this amount.

The court acknowledged Mahaffey had recently filed a motion to compel acknowledgement of satisfaction of the judgment. The court stayed enforcement of the judgment until after it decided the motion to compel.

G. *Motion to Compel Acknowledgment of Satisfaction of Judgment*

On August 29, 2017, Mahaffey filed an amended motion to compel acknowledgement he satisfied the $35,000 sanction award. In the motion, he requested the court order BK to refund the $35,000 he paid to the firm plus 10 percent interest. He sought $191,500 in damages for BK's failure to timely file the satisfaction of judgment and for the law firm's bad faith conduct. BK filed an opposition.

H. *Court Order*

On December 4, 2017, the court denied the motion to compel acknowledgement of satisfaction of the judgment. It also denied Mahaffey's request for a refund, sanctions, and damages.

The court explained there were two separate sanction awards in the case, and the $35,000 award payable to BK "must be viewed independently" from the $6,963 award payable to the Petriks. It rejected Mahaffey's argument concerning the one final judgment rule as being inapplicable. The court agreed section 666 was applicable to the referee fee award payable to the Petriks and ordered the debt was "extinguished" and the judgment would be "reduced accordingly." The court explained section 666 did not apply to the $35,000 sanction award payable to BK because BK was not a party to the underlying action and the concept of a net judgment did not apply.

Next, the court determined the $35,000 sanction had not been fully satisfied. Referring to its prior factual findings, the court stated Mahaffey did not fully comply with his settlement agreement concerning the sanctions. "Mahaffey did make four payments totaling $35,500" but based on interest accrued he still owed $7,375 effective November 9, 2017. In light of the above, the court determined a satisfaction of judgment was not required "because interest [was] still owing on these sanctions." Mahaffey filed an appeal to challenge this order.

DISCUSSION

I. *Applicable Legal Principles*

"'When a money judgment is satisfied, the judgment creditor immediately shall file with the court an acknowledgment of satisfaction of judgment.' (§ 724.030.) If the judgment creditor fails to file an acknowledgment of satisfaction of judgment, the judgment debtor may serve the judgment creditor with a written demand for the judgment creditor to file an acknowledgment of satisfaction with the court. (§ 724.050, subd. (a).)" (*Gray1 CPB, LLC v. SCC Acquisitions, Inc.* (2015) 233 Cal.App.4th 882, 898.) If the judgment creditor fails to comply within 15 days of the demand, "the person making the demand" may file and serve a motion for an order requiring the judgment creditor to comply with the demand and the creditor may be liable to the judgment debtor for $100 plus costs, attorney fees, and damages sustained by reason of the failure to comply. (§ 724.050, subds. (d), (e).)

II. *Standard of Review*

"On appeal, we will uphold the factual findings supporting the trial court's decision on a motion for satisfaction of judgment if the findings are supported by substantial evidence. [Citation.] We will presume the existence of every fact the finder of fact could reasonably deduce from the evidence in support of the judgment or order. [Citation.] Moreover, the constitutional doctrine of reversible error requires that '[a] judgment or order of the lower court [be] presumed correct.' [Citation.] Therefore, all intendments and presumptions must be indulged to support the judgment or order on matters as to which the record is silent, and error must be affirmatively shown. [Citation.] The appellant has the burden to demonstrate there is no substantial evidence to support the findings under attack. [Citation.] [¶] The interpretation of a statute is a question of law, which we review de novo. [Citation.]" (*Jhaveri v. Teitelbaum* (2009) 176 Cal.App.4th 740, 748-749 (*Jhaveri*).) Thus, to the extent we are required to interpret

the statutes governing satisfaction of judgment and acknowledgement of satisfaction of judgment, our review is de novo.

"A trial court's decision to apply *a credit in partial satisfaction* of the judgment is an exercise of the court's equitable discretion. [Citation.] An abuse of discretion occurs when, in light of applicable law and considering all relevant circumstances, the court's ruling exceeds the bounds of reason. [Citations.]" (*Jhaveri, supra,* 176 Cal.App.4th at p. 749, italics added.)

III. *Setoff Statutes*

"The English chancery courts allowed setoff to be raised as a defense as early as the 17th century. [Citations.] It was founded on the equitable principle that 'either party to a transaction involving mutual debts and credits can strike a balance, holding himself owing or entitled only to the net difference, . . .' [Citation.] Setoff, as it applies to this case, is now codified as section 431.70, . . . which provides in pertinent part: 'Where cross-demands for money have existed between persons at any point in time when neither demand was barred by the statute of limitations, and an action is thereafter commenced by one such person, the other person may assert in the answer the defense of payment in that the two demands are compensated for so far as they equal each other, . . .'" (*Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 743-744.)

Accordingly, "In order to assert a [section 431.70] setoff, cross-demands for money must exist between the parties. [Citations.] The right of setoff arises when two parties are mutually debtor and creditor to each other. [Citation.] The Supreme Court has held: '[The right to a setoff is] founded on the equitable principle that "either party to a transaction involving mutual debts and credits can strike a balance, holding himself owing or entitled only to the net difference, . . ." [Citation.]' [Citation.] The Supreme Court has also held: '[I]t is well settled that a court of equity will compel a setoff when mutual demands are held under such circumstances that one of them should be applied against the other and only the balance recovered.' . . . [I]n the ordinary setoff

circumstances, '. . . a setoff procedure simply eliminates a superfluous exchange of money between the parties,' and 'may operate to preclude an unfair distribution of loss if one of the parties is totally insolvent or is unable to pay a portion of the judgment against him.'" (*Birman v. Loeb* (1998) 64 Cal.App.4th 502, 518-519.)

Mahaffey also refers to section 666, a statutory setoff provision triggered when a cross-complainant's recovery exceeds that of the plaintiff. The trial court enters a single judgment when the plaintiff recovers on the complaint and the defendant recovers on the cross-complaint.[3] The statutory setoff rule eliminates an unnecessary exchange of money between the parties and protects each party from a potentially unfair distribution of loss as a result of the other party's insolvency. (*Jess v. Herrmann* (1979) 26 Cal.3d 131, 134.)

IV. *Analysis*

In the case before us, no mutual obligation existed between BK and Mahaffey. BK has never owed Mahaffey money. Accordingly, section 431.70 is inapt.

BK was not the plaintiff in this case, and Mahaffey did not file a cross-complaint against BK. Thus, section 666 is inapplicable by its express terms.

Simply stated, Mahaffey had no right to recover against BK for any reason, and without the existence of mutual debts and credits, there was no basis for ordering a setoff. Because it was undisputed Mahaffey still owed approximately $7,000 for interest payments on the $35,000 sanction award, the court correctly denied Mahaffey's motion for satisfaction of the judgment.

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[3] Section 666 provides in part: "If a claim asserted in a cross-complaint is established at the trial and the amount so established exceeds the demand established by the party against whom the cross-complaint is asserted, judgment for the party asserting the cross-complaint must be given for the excess; or if it appears the party asserting the cross-complaint is entitled to any other affirmative relief, judgment must be given accordingly."

Mahaffey raises several arguments attempting to place BK in the shoes of the Petriks, who did owe Mahaffey money. Mahaffey argues it was undisputed that a mutual obligation existed between himself (a cross-complainant) and the Petriks (the plaintiffs) subject to both sections 431.70 and 666. We agree the court was required to enter one judgment with respect to Mahaffey and the Petriks. However, the court could not enter a net judgment regarding BK and Mahaffey because section 431.70 requires evidence of cross-demands for money, and BK did not owe Mahaffey any money.

Mahaffey also provides case authority that the section 431.70 setoff applies to monetary sanction awards. This legal statement is correct as evidenced by the trial court's decision to extinguish the $6,963 referee fee award Mahaffey owed the Petriks *because* Mahaffey prevailed as a cross-complainant. Nevertheless, this argument is irrelevant to the issue of whether a nonparty (BK) must file a satisfaction of judgment relating to an independent $35,000 sanction award.

We reject Mahaffey's theory the Petriks "implicitly assigned" to BK their rights to the sanction award. Mahaffey asserts the assignment took place the moment the Petriks failed to object to the trial court's order expressly stating the sanctions were payable directly to BK.

To support his argument, Mahaffey cites three family law cases holding the right to *collect attorney fees* belongs to the client, not the attorney, "even if the award is made directly payable to the attorney." (Citing *Meadow v. Superior Court* (1963) 59 Cal.2d 610, 615-616 (*Meadow*); *Wong v. Superior Court* (1966) 246 Cal.App.2d 541, 545, 546; *Marshank v. Superior Court* (1960) 180 Cal.App.2d 602, 605-608.) Mahaffey maintains the Petriks "knew this law and that is why they requested the sanction award be made payable to their 'attorney client trust account.'" He argues the trial court's "sua sponte decision to make the payment directly to [BK] did not birth a new party with separate rights." (Italics omitted.) Mahaffey notes the Petriks owed these "attorney fees"

to BK for his work during the discovery dispute, and when "the Petriks did not protest the payment directly to [BK], they implicitly assigned their fees."

This argument fails for several reasons. To begin with, the family law cases are inapplicable. The three cases concerned marital dissolution disputes where the trial court permitted attorneys to intervene in the action and directly seek attorney fees and costs from one spouse. (See e.g., *Meadow, supra*, 59 Cal.2d at p. 614.) The spouses jointly filed writ petitions to restrain the trial court from considering the complaint in intervention.

In the *Meadow* case, the Supreme Court dismissed the complaint in intervention, holding, "The wife's attorney in a divorce action has no such interest in the matter in litigation, or in the success of either of the parties, or an interest against both, as would entitle him to intervene in the action or proceeding. [Citation.]" (*Id.* at p. 615.) The Supreme Court acknowledged there were Civil Code provisions authorizing trial courts to order attorney fees payable directly to the attorney. (*Meadow, supra*, 59 Cal.2d at p. 615.) "'"Notwithstanding the fees may be made payable to the attorney, they are granted to the wife for her benefit and are not awarded to her attorney. . . . A wife's attorney has no separate equity in counsel fees awarded to her. His right thereto is derived from his client."' [Citations.] And 'it is only the party who has the right to apply for an award of attorney's fees and section 137.3 and 137.5 [of the Civil Code] do not give the attorney for a party, either before or after any discharge of his services by his client, the right to make a motion in his own behalf for an award of such fees . . . and the trial court is without jurisdiction to . . . proceed with such motion or to make any award thereunder.' [Citation.]" (*Id.* at pp. 615-616.) The court held the only time an attorney may intervene in a divorce case is when "'by virtue of the contract of employment between the attorney and the client, the former is given a specific present interest in the subject matter of the action, which interest might be jeopardized by the client's discharge

of his original attorney and the employment of another to prosecute the action. [Citation.]' [Citations.]" (*Id.* at p. 615.)

In summary, Mahaffey's cited family law cases addressed a spouse's statutory right to attorney fees and the limited right of non-parties to intervene in divorce actions. The case before us concerns a $35,000 sanction award in a civil case, not a statutorily prescribed family law attorney fee award.

We have a limited record regarding the nature of the 2008 sanction award. The order did not specify what authority the court was relying on in ordering sanctions. The court did not explain why it ordered Mahaffey to pay sanctions directly to BK, rather than the Petriks. Although Mahaffey asserts the award merely represented attorney fees, there is nothing in the record to support this assertion, and we will not speculate as to how the court arrived at the sum of $35,000. On its face, the order only clarified one issue, i.e., the recipient of the award. In this regard, the court's decision was deliberate, evidenced by its actions of crossing out language from the proposed order and handwriting the sanctions were payable directly and immediately to BK, not to the Petriks.

Mahaffey never objected to the court's decision to order sanctions payable to opposing counsel, BK. To the contrary, he complied with the express terms of the order. Initially, he reached a settlement agreement with BK, agreeing to make six monthly payments directly to the firm. In 2009 he *paid* BK over $35,000. Mahaffey also filed an *assignment to* BK of his right to the final judgment against the Petriks in exchange for a full and complete satisfaction of the money judgment (the $35,000 sanction award). Indeed, this appeal concerns Mahaffey's efforts to have the trial court *compel* BK (not the Petriks) to file a satisfaction of judgment. For nearly 10 years Mahaffey has treated the sanction award as belonging exclusively to BK. It is too late to claim the sanctions should have been awarded to the Petriks. The time has long since passed to challenge the validity of the 2008 order.

On a final note, we agree with BK's observation there was no evidence of a valid assignment. Mahaffey does not explain why the Petriks' failure to object to the court's sanction order would serve as a valid assignment of their rights. He does not explain why this omission signifies anything other than an obvious lack of interest in the ruling. "An assignment requires very little by way of formalities and is essentially free from substantive restrictions. '[I]n the absence of [a] statute or a contract provision to the contrary, there are no prescribed formalities that must be observed to make an effective assignment. It is sufficient if the assignor has, in some fashion, manifested an intention to make a present transfer of his rights to the assignee.' [Citation.] Generally, interests may be assigned orally [citations], and assignments need not be supported by any consideration [citations]." (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1002.) There is no evidence suggesting the Petriks manifested an intention, orally or in writing, to assign any of their rights to BK.

DISPOSITION

We affirm the postjudgment order. We deny respondent's motion to dismiss the appeal pursuant to the disentitlement doctrine; his dilatory tactics do not rise to the level where equity demands we disqualify him from seeking our aid on appeal. (*Gwartz v. Weilert* (2014) 231 Cal.App.4th 750, 761.) Respondent shall recover its costs on appeal.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

IKOLA, J.